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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,264	02/05/2004	George Bayer	2350.422	8672
23405	7590	04/29/2005	EXAMINER	
HESLIN ROTHENBERG FARLEY & MESITI PC 5 COLUMBIA CIRCLE ALBANY, NY 12203			REESE, DAVID C	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 04/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/774,264

**Applicant(s)**

BAYER ET AL.

**Examiner**

David C. Reese

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14, 23-25, 29-40, 42 and 44-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-25 is/are allowed.
- 6) ☒ Claim(s) 1-5, 9, 10, 29-38, 40, 44-46, 48-51 and 53 is/are rejected.
- 7) ☒ Claim(s) 6-8, 11, 39, 42, 47, and 52 is/are objected to.
- 8) ☒ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Status of Claims*

[1] Claims 15-22, 26-28, 41, and 43 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected method of assembly, there being no allowable generic or linking claim. Applicant's election with traverse of Claims 1-43 in the reply filed on 3/8/2005 is acknowledged. The traversal is on the ground(s) that the inventions as presented are not distinct and thus should not be subjected to restriction. This is not found persuasive because the applicant did not provide an argument as to why said inventions are indeed not distinct.

The requirement is still deemed proper and is therefore made FINAL.

Consequently, claims 1-14, 23-25, 29-40, 42, and 44-53 are now pending.

### *Claim Objections*

[2] Claim 6 is objected to because of the following informalities: minor grammatical error in line 1 on page 4, "a first end a and a". Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

[3] Claim 40 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In the instant case, in lines 2-3 of Claim 40, it is stated "and a

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third aperture.” In Claim 1, however, it is stated that the “first ornament has at most a first and second aperture”.

*Claim Rejections - 35 USC § 102*

[4] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

[5] Claims 1-5, 9-10, 12-14, 44-46, 48-51, and 53 are rejected under 35 U.S.C. 102(b) as clearly anticipated by Burckhardt, US- 3,820,201, because the invention was patented or described in a printed publication in this or a foreign country, or in public use or on sale in this country more than one (1) year prior to the application for patent in the United States.

As for Claim 1, Burckhardt teaches of a arrangement/link construction for a crystal pendant, the arrangement comprising:

a first ornament (the first/top 10 in Fig. 2) having at most a first aperture and a second aperture (Claim 1, “...having a plurality of crystals each with opposed link openings.”);

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a second ornament (the second/middle 10 in Fig. 2) having at least a first aperture (top aperture); and

at least one connector (12) for connecting the first ornament (10) to the second ornament (10);

whereby the second aperture of the first ornament (10) is laterally disposed from the first aperture of the first ornament (10).

Re: Claim 2, wherein the second ornament comprises a first aperture (top aperture) and a second aperture (bottom aperture) (the second/middle 10 in Fig. 2).

Re: Claim 3, wherein the second aperture (aperture at the bottom of the second/middle 10 in Fig. 2) of the second ornament is laterally disposed from the first aperture of the second ornament (aperture at the top of the second/middle 10 in Fig. 2).

Re: Claim 4, wherein the second aperture (bottom aperture) of the first ornament (the first/top 10 in Fig. 2) is opposite the first aperture (top aperture) of the first ornament (the first/top 10 in Fig. 2).

Re: Claim 5, wherein the at least one connector (18) comprises a plurality of connectors (20, 22).

Re: Claim 9, further comprising at least a third ornament (third/last 10) having at least one aperture (top of 10) and at least one third connector (18) connecting the second ornament (middle/second 10) and the third ornament (third/last 10).

Re: Claim 10, wherein the at least one connector comprises at least one-pre-formed U-shaped connector having ends adapted to be inserted into and secured to an aperture of an ornament (20, 22 in Fig. 5).

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Re: Claim 12, wherein the decorative ornaments (10) comprises one or more of beads, crystals, stones, and gems.

Re: Claim 13, wherein the at least one connector comprises a metallic wire having a diameter between about .0625 inches and about .125 inches (20, 22).

Re: Claim 14, wherein the first ornament and the second ornament comprise octagonal ornaments having two through holes (10).

Re: Claim 44, wherein the at least one connector comprises a connector fabricated from one of sheet and plate (18).

Re: Claim 45, wherein the at least one connector comprises at least two connectors (20, 22).

Re: Claim 46, wherein the at least one connector is fabricated from one of sheet and plate (18) and is fabricated by one or more of the following processes: laser cutting, water-jet cutting, and electro-discharge machining.

The determination of patentability in a product-by-process claim is based on the product itself, even though the claim may be limited and defined by the process. That is, the product in such a claim is unpatentable if it is the same as or obvious from the product of the prior art, even if the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 697, 227 USPQ 964, 966 (Fed. Cir. 1985). A product-by-process limitation adds no patentable distinction to the claim, and is unpatentable if the claimed product is the same as a product of the prior art. A comparison of the recited process with the prior art processes does NOT serve to resolve the issue concerning patentability of the product. *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974). Whether a product is patentable depends on whether it is known in the art or it is obvious, and is not governed by whether the process by which it is made is patentable. *In re Klug*, 333 F.2d 905, 142 USPQ 161 (CCPA 1964). In an ex parte case, product by process claims are not construed as being limited to the product formed by the specific process recited. *In re Hirao et al.*, 535 F.2d 67, 190 USPQ 15, see footnote 3 (CCPA 1976).

Re: Claim 48, wherein the at least one connector comprises at least two connectors (20, 22).

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Re: Claim 49; see 112 Claim rejections, as well as above- Claim 46.

Re: Claim 50, wherein the first ornament and the second ornament comprise two of a plurality of ornaments providing an ornament chain (Fig. 2).

Re: Claim 51, wherein the ornament chain is at least 5 feet in length (Fig. 2).

Re: Claim 53, wherein the ornament chain is at least 5 feet in length (see 112 rejections, Fig. 2).

[6] Claims 29-36 are rejected under 35 U.S.C. 102(b) as clearly anticipated by Schonbek, US- 5,144,541, because the invention was patented or described in a printed publication in this or a foreign country, or in public use or on sale in this country more than one (1) year prior to the application for patent in the United States.

As for Claim 29, Schonbek teaches of a gallery assembly for chandeliers, the device comprising:

a plate having an edge (outside edge of 164, 166 in Fig. 9); and

a channel in the plate (142) having an open first end (162) located at the edge of the plate, a closed second end (170, 172), and a horizontal section (164, 166) and at least one vertical section (to the left of 160) located between the open first end (162) and the closed second end (170, 172);

wherein the channel is adapted to receive the hook of the ornament and support the hook in the closed second end of the channel (Fig. 10, 8).

Re: Claim 30, wherein the channel further comprises an expansion in the vertical section (to the left of 160).

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Re: Claim 31, wherein the closed second end comprises a convergent closed second end (between 170 and 172).

Re: Claim 32, wherein the convergent closed end converges to a point (the point between 170 and 172).

Re: Claim 33, wherein the channel comprises a channel (142) that passes through the thickness of the plate (via 162).

Re: Claim 34, wherein the at least one vertical section (left of 160) of the channel (142) comprises at least two vertical sections (the multiple: left of 160).

Re: Claim 35, wherein the mounting hook of the ornament comprises a mounting loop (82 in Fig. 8).

Re: Claim 36, wherein the mounting loop comprises a wire mounting loop (82 in Fig. 8).

[7] Claims 37-38 are rejected under 35 U.S.C. 102(b) as clearly anticipated by Bayer et al., US- 5,109,325, because the invention was patented or described in a printed publication in this or a foreign country, or in public use or on sale in this country more than one (1) year prior to the application for patent in the United States.

As for Claim 37, Bayer et al. teaches of a fastening device for chandelier trimmings, the device comprising:

a mounting hook (Fig. 4a) adapted to be attached to the decorative ornament (6 in Fig. 4d);

a plate having a planar surface and an edge (12); and



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a channel (10 in Fig. 4b) in the plate having an open first end located at the edge of the plate, a closed second end, and a horizontal section and at least one vertical section located between the open first end the closed second end;

wherein the channel (10 in Fig. 4b) is adapted to receive the hook of the ornament and support the ornament whereby the preferred direction of orientation of the ornament is directed substantially parallel to the planar surface of the plate (Fig. 4f).

Re: Claim 38, wherein the fixture comprises a circular fixture having a radial direction (16 in Fig. 4b), wherein the planar surface of the plate and the preferred direction of orientation of the ornament are directed in the radial direction of the fixture (Fig. 4f).

*Allowable Subject Matter*

[8] Claims 6-8, 11, 39, 42, 47, and 52 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As for Claims 6 and 11, the prior art, incorporating other corresponding limitations as set forth above, does not teach of the first end of the second connector inserted into the second aperture of the first ornament.

Claims 7-8 are dependent from Claim 6.

As for Claim 39, the prior art, incorporating other corresponding limitations as set forth above, does not teach of a second end adapted to be inserted into the second aperture, and a mounting loop located between the first end and the second end, the mounting loop adapted to mount to the channel.

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As for Claim 42, the prior art, incorporating other corresponding limitations as set forth above; does not teach of a continuous connector passing through an aperture of at least the first, the second, and the third ornaments.

Claims 47 and 52 are dependent from Claim 42.

[9] Claim 23 is allowed.

As for Claims 23, the prior art, incorporating other corresponding limitations as set forth above, does not teach of the a second end adapted to be inserted and secured to the second aperture of the ornament, and a loop positioned between the first end and the second end, the loop adapted to be hung from a support.

Claims 24-25 are dependent from Claim 23.

### *Conclusion*

[10] The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

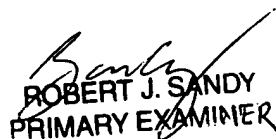
The following patents are cited further to show the state of the art with respect to this particular type of ornament; as well as their extreme relevance to the current application as many read extensively onto the claimed invention: please see submitted notice of reference cited.

[11] Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Reese whose telephone number is (571) 272-7082. The examiner can normally be reached on 7:30 am-6:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,  
David Reese  
Examiner  
Art Unit 3677

  
ROBERT J. SANDY  
PRIMARY EXAMINER